

### REMARKS

This is in response to the Office Action dated January 13, 2005, and the references cited therewith.

Claim 1 is amended, no claims are canceled, and no claims are added; as a result, claims 1-46 remain pending in this application.

Claim 1 is amended to more precisely define the claimed subject matter and not for purposes of distinguishing over particular art.

#### §102 Rejection of the Claims

Claims 1-3, 5 and 8-40 were rejected under 35 USC § 102(b) as being anticipated by Barreras (U.S. Patent No. 5,807,397).

Applicant respectfully submits that Barreras '397 does not appear to teach or disclose long range radio frequency wireless communication, as recited in claim 1. Applicant traverses the Office Action assertion concerning "variations in a modulated signal may be extrapolated to convey information, but essentially represent a powering and unpowering of an antenna connected to a circuit." The assertion appears unsupported and Applicant respectfully requests withdrawal or citation to an authority of record in support of the assertion.

As to claim 17, Applicant is unable to find, in Barreras '397, a teaching or disclosure of programming the device to select one or more of the plurality of wireless transmitters for transmitting an outbound signal, as recited in the claim. Applicant is unable to find a citation to such a teaching appearing in the record. As to claim 29, Applicant is unable to find, in Barreras '397, a teaching or disclosure of selecting one of a plurality of data receivers of the implantable medical device and at the output of the selected receiver, decoding data from the inbound wireless signal, as recited in the claim. Applicant traverses the Office Action assertion that "electromagnetic energy [is] used to make a decision in circuit . . . 18" of Barreras '397. Withdrawal of the assertion or a citation in support of the Office Action assertion is respectfully requested.

As to claim 36, Applicant is unable to find, in Barreras '397, a teaching or disclosure of closing the channel after a predetermined period, as recited in the claim. The Office Action

refers to switch 72, however, Applicant submits that simply identifying such a component does not serve to establish a teaching or disclosure of the particular elements recited in the claim.

For these and other reasons, it appears that *prima facie* anticipation has not been established with regard to independent claims 1, 17, 29 and 36. In addition, Applicant submits that the corresponding dependent claims are also in condition for allowance. Reconsideration and allowance of claims 1-3, 5 and 8-40 is respectfully requested.

§103 Rejection of the Claims

Claims 1, 4, 6, 7, 39, 40-42 and 46 were rejected under 35 USC § 103(a) as being unpatentable over Barreras (U.S. Patent No. 5,807,397).

Applicant respectfully traverses the rejection and submits that *prima facie* obviousness has not been established. In addition to the shortcomings of Barreras '397 noted above, Applicant submits that the Office Action does not appear to set forth the requisite motivation for combining in the manner proposed. In particular, the Office Action appears silent as to meeting the initial burden of providing some suggestion of the desirability of the claimed subject matter. Here, the Office Action appears to rely on the statement that "because these two are well-known antenna configurations." Applicant submits that such a statement does not establish even a modicum of desirability and appears to be contrary to the precept of M.P.E.P. § 2143.03 which provides that the fact that references can be combined is not sufficient to establish *prima facie* obviousness. Furthermore, and pursuant to M.P.E.P. § 2143.01, an assertion concerning the level of skill in the art does not satisfy the requirement of providing the suggestion to combine references. The Office Action does not appear to identify, with specificity, the desirability of making the specific combination as recited in the claim. In particular, the Office Action does not appear to explain the reasons one of ordinary skill in the art would have been motivated to select and modify Barreras in order to render the claimed invention obvious.

At present, the record does not evince a desirability for the proposed modification and thus the rejection appears improper.

In an earlier response, Applicant raised questions regarding the citations to Cubley and White. The Office Action does not recite Cubley and White in the statement of rejection. In addition, the record does not include evidence of a source of motivation for combining Barreras

'397 with either of Cubley or White. For at least these reasons, the obviousness rejections are treated herein as based solely on Barreras '397.

For these and other reasons, Applicant respectfully submits that the Office Action has not established *prima facie* obviousness. Reconsideration and allowance of claims 1, 4, 6, 7, 39, 40-42 and 46 is respectfully requested.

Allowable Subject Matter

Claims 43-45 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant respectfully submits that the pending claims are in condition for allowance for at least the reasons presented above. Reconsideration and allowance of claims 43-45 is respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6911 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

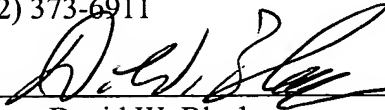
Respectfully submitted,

JEFFREY A. VON ARX ET AL.

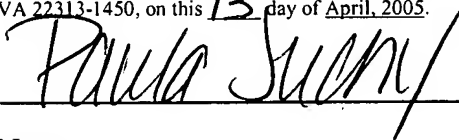
By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6911

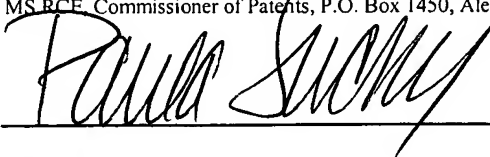
Date April 13, 2005

By   
David W. Black  
Reg. No. 42,331

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